IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2881 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISHVAS STEEL LTD. THRO; ITS DIRECTOR HEMANT CHADHA

Versus

STATE OF GUJARAT

Appearance:

MR TH SOMPURA for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

MR SS SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/07/2000

ORAL JUDGEMENT

#. Heard the learned advocate Mr.T.H.Sompura for the

petitioner and the learned advocate Mr.S.S.Shah for the respondent No.2. Learned APP Mr.S.T.Mehta representing the respondent No.1 - State is present.

#. Petitioners have challenged the legality, validity and propriety of the order passed by the learned Chief Judicial Magistrate, Bhavnagar dated 1.5.2000 in the proceedings of Misc.Criminal Case No.58/2000.

#. Petitioners have produced the certified copy of the complaint filed by the respondent No.2 in the court of Chief Judicial Magistrate, Bhavnagar on 1.5.2000. Accordingly, allegations are made against the present petitioners that the petitioner No.2 as the agent of petitioner No.1 has taken delivery of scrap goods sold by the respondent No.2 to the petitioners on different dates vide different bills as per the details stated in para 3. That goods worth Rs.8,56,241/- has been sold by the respondent No.2 to the petitioners by nine different bills. Allegations further state that the present petitioners assured the respondent No.2 to make the payment of the price of the said goods by issuing a cheque as they maintain the account in State Bank of Saurashtra, Darbargadh Branch. That accordingly a cheque bearing No.2284283 dated 3.3.2000 for the aggregate amount of Rs.5,75,130/- was issued by one Vasudev Agrawal-Director of the petitioner No.2 - Company in favour of the respondent No.2. That another cheque of Rs.1,00,000/- dated 13.3.2000 drawn on State Bank of Saurashtra, Darbargadh Branch bearing No.2287443 was also issued on behalf of the petitioner No.2 to the respondent No.2. That the cheque of Rs.1,00,000/- was cleared, but other cheque of Rs.5,75,130/- was dishonoured on instruction of drawer to stop payment. That after giving demand notice, respondent No.2 through his General Power of Attorney holder - Hemant Thakkar presented the complaint which is registered by the court as Misc.Criminal Case No.58/2000 on 1.5.2000. That after recording verification, the learned Chief Judicial Magistrate, Bhavnagar directed the Police Sub-Inspector, `B' Division Police Station, Bhavnagar to investigate the case as provided under section 156(3).

#. Petitioners have challenged the above stated proceedings on the ground that, on the same day of filing the above stated complaint, the present respondent No.2 had filed another complaint in the same court of Chief Judicial Magistrate, Bhavnagar alleging that a cheque issued by the petitioners for Rs.5,75,130/- dated 3.3.2000 issued on State Bank of Saurashtra, Darbargadh Branch towards the part payment of outstanding dues of

goods purchased has been dishonoured despite making legal demand by notice and as such the present petitioners who are shown as accused in the said complaint have committed the offence made punishable under sections 406, 420 read with section 114 of IPC and also under section 138 of Negotiable Instruments Act, 1881.

It may be noted that, after recording of verification of the said Hemant Thakkar, the court appears to have issued summons against the present petitioners as the accused of the said case for the offence made punishable under sections 406, 420 read with section 114 of IPC and under section 138 of Negotiable Instruments Act and made returnable on 17.6.2000.

#. It has been submitted on behalf of the petitioners that the respondent No.2 having filed Criminal Case No.3538/2000 on which the learned Chief Judicial Magistrate, Bhavnagar has issued process against the present petitioners had suppressed material fact while filing impugned complaint in the same court which was registered as Misc.Criminal Case No.58/2000 for the same offence of Sections 406, 420 and 114 of IPC and under section 138 of Negotiable Instruments Act. That such initiation of second proceedings on the same facts amounts to an abuse of process of law and thereby deserves to be quashed and set aside.

#. Learned advocate for Respondent No.2, Mr.S.S.Shah relying on the observations made by the Supreme Court in the matter of Hazari Lal Vs. Rameshwar Prasad reported vide AIR 1972 SC 484, has urged that the impugned complaint registered as Misc.Criminal Case No.58/2000 is filed for the amount which has remained unpaid to the respondent No.2. That the court has issued the order to direct the police authority to investigate under section 156(3). That as observed by the Supreme Court in the above stated judgment, the High Court should be reluctant in exercise of powers under section 482 which would interfere the investigation to be made by the competent agency and as such the petition is not maintainable at law.

#. It is true that, discretion conferred under section 482 of the Code has to be exercised sparingly and in exceptional cases only. That generally the court would be reluctant to exercise the power to interfere so as to intercept the investigation initiated by the police authority. However, section 482 also confer discretion on the court with a primary object to prevent the abuse of process of law and to pass appropriate order so as to

meet the end of justice. In the instant case, perusal of the impugned complaint - Misc.Criminal Case No.58/2000 prima facie disclose the facts that the factum of initiating the proceedings vide the first complaint registered as Criminal Case No.3538/2000 on the same day and based on the same facts have been suppressed and the order for investigation appears to have been obtained by misleading the court. In view of the said fact, attempt made by and on behalf of the respondent No.2 to file second criminal case which is registered as Misc.Criminal Case No.58/2000 clearly suggests that, on account of suppression of the said facts and misleading the court, the powers of the court have been abused.

#. On the basis of the aforesaid discussion as I find that the proceedings of second Criminal Case being Misc.Criminal Case No.58/2000 filed by the respondent No.2 requires to be quashed alongwith the impugned order passed by the Chief Judicial Magistrate, Bhavnagar on the same day - 1.5.2000 so as to prevent the abuse of the process of law and also to meet the end of justice, following operative orders are passed.

#. Proceedings of Misc.Criminal Case No.58/2000 alongwith the impugned order passed by the Chief Judicial Magistrate, Bhavnagar dated 1.5.2000 to investigate the said complaint under section 156(3) of Criminal Procedure Code are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)
(pathan)